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Supreme Court, U.S.
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Nos. 85-2077 and 86-372

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

BILLY BRYAN, ARTHUR COMER,
GEORGE BULLARD and CHARLIE GREENE,
(No. 85-2077)

and

UNITED STEELWORKERS OF AMERICA,
(No. 86-372)

Petitioners,

vs.

ELBERT ERKINS, SAMUEL DENSON,
and U.S. FIDELITY & GUARANTY CORP.,

Respondents.

On Petitions For Writs Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

APPENDIX TO BRIEF OF RESPONDENTS ELBERT ERKINS AND SAMUEL DENSON IN OPPOSITION TO THE PETITIONS FOR WRITS OF CERTIORARI

Counsel of Record: WALTER F. KELLY
Sutton & Kelly
1409 East Capitol Drive
Milwaukee, WI 53211
(414) 961-0802

THOMAS M. JACOBSON
Jacobson, Sodos & Krings, S.C.
152 West Wisconsin Avenue
Milwaukee, WI 53203

WILLIAM I. GRUBB II
P. O. Box 357
Eufaula, AL 36027

MEMORANDUM OPINION

OF JUDGE TRUMAN HOBBS

IN

ERKINS V. BRYAN
Case No. 80-180-N
Middle District of Alabama
June 6, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LBERT ERKINS and
AMUEL DENSON

Plaintiffs

v.

ILLY BRYAN, and ARTHUR
OMER, and GEORGE BULLARD
nd CHARLIE GREENE, and
NITED STATES FIDELITY
ND GUARANTY CORPORATION

Defendants

MEMORANDUM OPINION

This action was commenced under Section
01 (b) of the Labor-Management Reporting
nd Disclosure Act (LMRDA), 29 U.S.C. § 501,
y two members of Local 7326, United
teelworkers of America, against defendants
illy Bryan, George Bullard, Arthur Comer,
nd Charlie Greene. Plaintiffs allege that
aid defendants breached their fiduciary
uties owed to Local 7326 by

sappropriating strike funds for their own rsonal benefit in violation of 29 U.S.C. § l(a). This Court has jurisdiction by rtue of 28 U.S.C. § §§ 1331 and 1337. is matter was tried before the Court thout a jury on January 3-5, 1984. The urt, having considered the evidence esented at trial, and the arguments of the rties as reflected in their post-trial iefs, now enters this memorandum opinion rsuant to Rule 52 of the Federal Rules of vil Procedure. For the reasons stated rein, the Court finds for the plaintiffs.

BACKGROUND

Elbert Erkins and Samuel Denson, aintiffs in the above styled action, were nk and file members of the United eelworkers of America (International) and its affiliate, Local 7326. Defendants lly Bryan, George Bullard, Arthur Comer, d Charlie Greene were also members of the

nited Steelworkers of American and Local 326. During the relevant times herein, ach defendant occupied at one time or nother a position of fiduciary esponsibility for Local 7326.[1/]

From December 1976 through May, 1978, pproximately three hundred members of Local 326 engaged in a strike against their mployer, the American Buildings Company of ufaula, Alabama. This strike commenced at he expiration of the agreement between ocal 7326 and the company and was prompted y new terms to the collective bargaining greement demanded by the company. In upport of the strike, the AFL-CIO later eclared a boycott of the company's roducts.

1. Defendant Bullard contends that he as never an officer, agent, shop steward, r representative of Local 7326 and, thus, nder the language of Section 501, cannot be eemed a proper party defendant in this ction. The Court will address this ontention hereinafter.

The strike was long and bitter. Shortly after the strike began, the leaders of Local 7326 were instructed by the International to establish a strike committee. A meeting was convened, and the membership elected Oscar Boswell, Tommy Gilbert and Sammy Belcher to serve on this strike committee. The local's financial officers -- Billy Bryan (President), Walter Ward (Treasurer), and Billy Campbell (Financial Secretary) -- also served on this committee. In support of the strike, the International periodically sent money to the local with instructions that it be deposited into a special checking account which would contain only strike and defense funds. This was standard procedure when any local union engaged in a strike. The fund was financed from dues collected from union members throughout the country.

The strike and defense fund was created to assist strikers in providing for themselves and their families. Strikers originally received a weekly strike benefit of $20.00, but this amount was raised to $30.00 per week in September 1977. In order to qualify for this weekly benefit, a striker was required to perform work for the union, which usually meant working a shift at the picket line. In addition to this weekly benefit, a striker could petition the strike committee to obtain money from the strike fund to pay bills or other obligations. To obtain this additional assistance, the striker would have to demonstrate an urgent need. The strikers were instructed at the outset of the strike to exhaust their own financial resources and seek alternative sources of income (e.g., unemployment compensation) before petitioning the strike committee for

assistance. See Plaintiffs' Exhibit Nos. 7, 16. No employee was entitled to assistance from the strike fund except by demonstrating need. During the course of the strike, literally hundreds of the strikers' bills were paid from the strike funds. With few exceptions, no striker lost a house, automobile or other item of personal property for failure to meet his monthly payments.[2/]

When a striker received this additional assistance from the strike fund, he was required to perform additional work for the union as reimbursement for that assistance. Elbert Erkins testified that whenever he obtained additional money, he would have to

2. William Walker testified that his automobile and furniture were repossessed when the strike committee refused to advance him any more money from the strike fund. He conceded on cross-examination, however, that he was employed during the strike and was told by the strike committee that first preference would have to go to the unemployed strikers.

walk extra shifts on the picket line or forego receiving a commensurate number of weekly benefit checks. William Walker and Billy Bryan offered similar, corroborative testimony.

Toward the beginning of the strike, the picket lines were fully manned as most strikers were still unemployed and eager to lend their time and efforts in furtherance of the strike. As the months passed, however more and more strikers left to seek employment elsewhere This caused severe problems for the leaders as they often had to scurry around to find enough strikers to maintain the picket lines. Billy Bryan and George Bullard testified that they were asked by various members to abandon their employment or efforts in seeking employment and concentrate their full time and energies on maintaining the strike. Demands on the leaders' time

increased even further during the peak of the boycott as they spent much of their time on trips away from Eufaula seeking to enlist the support of other workers in behalf of the boycott. More than one of the defendants testified that his duties for the union required him to work from twelve to sixteen hours per day for five to seven days per week.

Despite vigorous efforts by the union, the strike was lost when the employees voted not to be represented by the union at a decertification election conducted on May 18, 1978. The results of this election became final when the union's objections to the decertification election were rejected by the NLRB on July 14, 1978.

After losing the decertification election, Local 7326 was no longer authorized to represent the employees at the company's Eufaula plant. Since Local 7326 did not serve

as the bargaining representative for employees of any other employer, William Caldwell, a representative of the International, was appointed as administrator to conclude the affairs of Local 7326. Following Mr. Caldwell's appointment, Local 7 ceased to exist for all practical purposes. All remaining strike finds were eventually returned to the International.

Shortly after the conclusion of the strike and the NLRB's certification of the election results, several members of the union, became concerned that defendants had personally benefited from the strike. Although they suspected that defendants had improperly used strike funds to purchase several items of personal property, plaintiffs had no tangible proof to support these suspicions. There was even some speculation that defendants may have received bribes from company officials. No evidence was presented in support of any such speculation.

Arrangements were made for Mr. Caldwell to meet with plaintiffs and other employees to discuss why the strike and election were lost and whether any of the defendants may

have misappropriated strike funds. Despite this meeting with Mr. Caldwell, plaintiffs' suspicions still existed, and they decided to conduct their own investigation. They traveled to Milwaukee, Wisconsin in June 1979 to secure the assistance of Thomas Jacobson, an attorney. At first plaintiffs were unable to meet the fee demands of Mr. Jacobson. However, they returned in October 1979 with sufficient funds to retain him. After travelling to Eufaula and conducting his own investigation, Mr. Jacobson discovered sufficient information to warrant contacting the International and demanding suit be filed against defendants. The International refused and instead forwarded the information provided to it by Mr. Jacobson to the Department of Labor for its consideration.

On May 1, 1980, plaintiffs sought leave from this Court to file suite against

defendants under Section 501(b). In their verified proposed complaint, plaintiffs asserted that defendants committed numerous violations of this fiduciary obligations as officers or representatives of Local Union 7326. The verified proposed complaint requested on accounting and reimbursement of any misappropriated strike funds. The Court heard testimony from the plaintiffs and determined that the good cause requirement of Section 501(b) was satisfied. The Court also found that plaintiffs had satisfied the statutory requirements that they first demand the International to bring suit against defendants. After further finding that the International had refused to sue the defendants, this Court allowed plaintiffs to proceed with their complaint.

On June 12, 1980, the International filed a motion to intervene in this lawsuit for the special purpose of seeking a

vacation of this Court's order allowing plaintiffs to commence this action. The Court allowed the International to intervene. When at a hearing plaintiffs contended that they were not union members at the time the suit was filed, this Court held that the plaintiffs lacked standing to bring this suite, and, therefore, withdrew its leave to file suit. Plaintiffs appealed, and the Court of Appeals reversed, holding that plaintiffs remained "members" of the union within the meaning of Section 501(b). See, Erkins v. Bryan,663 F.2d 1048 (11th Cir. 1981).

I. APPLICABLE LEGAL PRINCIPLES

The LMRDA was enacted in response to Congressional findings of widespread embezzlement and misuse of union funds by officers and representatives of union, Congress found that some supervision over union officials was necessary in order to

ensure the faithful discharge of those officials' fiduciary obligation. Note, Determining Breach of Fiduciary Duty Under the Labor-Management reporting and Disclosure Act: Gabauer v. Woodcock, 93 Harv. L. Rev. 608, 614 (1980). These fiduciary obligations were established in Section 501(a), which provides in pertinent part:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest and expect the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organizations such as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal

> interests which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization...

29 U.S. C. § 501(a). Section 501(b) grants a federal cause of action to members of a union to sue officers or representatives of this unions for breaches of the fiduciary obligations established in Section 501(a) where the union after demand either fails or refuses to sue 29 U.S. C. § 501(b).

Although Section 501 was designed as a direct and far-reaching response to union corruption and breach of trust, Morrissey v. Curran, 482 F. Supp. 31, 38 (S.D.N.Y. 1979), affirmed in pertinent part, 650 F.2d 1267 (2d Cir. 1981), Congress also contemplated a

limited judicial intervention into the internal affairs of labor unions. As stated in Gurton v. Arons, 339 F.2d 371, 375 (2d Cir. 1964):

> The provisions of the LMRD were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of the unions. Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. The conviction of some judges that they are better able to administer a union's affairs than the elected officials is wholly without foundation.

Accord, Gabuaer v. Woodcock, 594 F.2d 662, 670 (8th Cir.), cert. denied, 44 U.S. 841 (1979). Furthermore, Section 501 counsels courts to consider the special problems and functions of labor unions in defining the scope of the fiduciary obligation. Farrington v. Benjamin, 468 F. Supp. 343,

352 (E.D. Mich. 1979). Taken together, these two principles evidence an intent by Congress, in enacting Section 501, to relieve union officials from stringent judicial review of their activities and ensure that special sensitivity be given to the unique nature of the labor union fiduciary. See generally, Leslie, Federal Courts and Union Fiduciaries, 76 Col. L. Rev. 1314 (1976).

Although courts have been unable to reach agreement on the precise scope of the fiduciary obligation, the clearest exposition of this standard may be found in Morrissey v. Currran, 650 F.2d 1267, (2d Cir. 1981).

> Section 501's emphasis on the particular facts of the case, in determining the appropriate fiduciary standard, and the policy underlying its enactment - preventing officers' misuse of union funds for their personal benefit - support judicial review of authorized expenditures that impart personal financial gain to those officers, just as courts would review self-interested transactions under the corporate common law. Under this standard, the court is not at liberty to review any compensation arrangements more generous that the court might have established. Section 501 does not convert judges into paymasters for union officers. The fiduciary standards for union officers impose liability upon them when they approve their receipt of excessive benefits, significantly above a fair range of reasonableness.

Unquestionably, a crucial issue in this case is the effect that should be given to the fact that most if not all the challenged expenditures were authorized either by the strike committee or William Caldwell, the staff representative from the International. Courts and commentators alike have struggled with this issue. One view holds that where an expenditure ids duly authorized, such authorization is a complete defense to an action under Section 501. See McNamara v.Johnston, 522 F.2d 1157, 1165-66 (7th Cir. 1975), cert. denied, 425 U.S. 911 (1976). See generally, Cox Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 829 (1960).

The other view directs courts to look beyond the authorization of a certain expenditure and assess the nature of the expenditure and the extent to which the

union official personally benefits from it. Although many of the challenged expenditures in the present case may have benefited the union, many also personally benefited the individual defendants. This second view mandates stricter judicial scrutiny where the challenged expenditure confers a personal benefit on the union official. Brink v. DaLesio, 496 F. Supp 1350, 1357 (D. Md. 1980), affirmed in pertinent part, 667 F.2d 420 (4th Cir. 1981). Again, Morrissey v. Curran, 650 F.2d 420 (4th Cir. 1981), represents the best illustration of what this Court agrees is the proper role for courts in these matters. The Morrissey court noted "that where a union officer personally benefits from union funds, a court in a Section 501(b) suit may determine whether the payment, notwithstanding its authorization, is so manifestly unreasonable as to evidence a breach of the fiduciary

obligation imposed Section 501(1)." Id. at 1274. Accord, Puma v. Brandenburg, 324 F. Supp. 536, 544 (S.D.N.Y. 1971). Moreover, the burden is on the official to prove that the expenditure was both validly authorized and reasonable. Brink v. DaLesio, 667 F.2d 420, 424 (4th Cir. 1981). This Court is persuaded that the Morrissey rule is consistent with the traditional, common law duties of fiduciaries and that the authors of Section 501(a) intended to impose such scrutiny upon payments to union officials.

With these principles in mind, the Court now turns to the specific charges of fiduciary breach made by plaintiffs. Before addressing these charges, however, the Court must first resolve the threshold issue whether plaintiffs' Section 501 suite was timely commenced.

I(a). TIMELINESS

Defendants contend that the appropriate statue of limitations bars recovery on plaintiffs' claim. The LMRDA in general and Section 501 in articular are silent on the issue of what statute of limitations, if any, governs a suite by union members against union officials for breach of the latter's fiduciary obligations. Therefore, the Court's present task is to determine the appropriate statute of limitations or other rule of timeliness that should apply to the facts of this case.

Defendants emphatically urge the Court to borrow the six-month limitations period found in Section 10(b) of the Labor-Management Relations Act, 29 U.S.C. § 160(b), and defendants maintain that DelCostello v. International Brotherhood of Teamsters, ___U.S.___, 103 S.Ct. 2281 (1983) compels such a conclusion. In DelCostello,

the Supreme Court held that the six-month limitations period of Section 10(b) applied to a "hybrid action" where an individual combines a fair representation claim against a union with a breach of the collective bargaining agreement claim against an employer. Crucial to this holding in DelCostello was the view that such hybrid claims, if proven, at least resembled if not constituted unfair labor practice charges under Sections 8(a) and 8(b).

Another reason advanced by the DelCostello court for applying the limitations period of Section 10(b) to these hybrid claims was that the "national policy considerations implicated in a hybrid action required application of the six-month period." Erkins v. United Steelworkers of America, 723 F.2d 837, 839 (11th Cir. 1984), quoting DelCostello v. International Brotherhood of Teamsters, ___U.S. at ___, 103 S.Ct. at 2294.

Defendants also cite the Court to Local Union 1397, United Steelworkers of America v. United Steelworkers of America, Civil Action No. 83-2888 (W.D. Pa., March 1, 1984) as authority for the proposition that the limitations period of Section 10 (b) should govern and bar plaintiffs' claims under Section 501. In the aforementioned case, plaintiffs, a local union and several of its members, brought suit under Section 411(a) of the LMRDA against the International Union. The International Union filed a motion to dismiss, asserting that Section 10(b) barred plaintiffs' claims. The Court, in granting the motion, extended the DelCostello holding to suits brought under Section 411(a) of the LMDRA The Court analogized Section 411(a) suits to fair representation claims and observed that since many fair representation claims involved unfair, arbitrary, or

discriminatory treatment of workers by unions and that the same union conduct could state a claim under Section 411(a), the application of Section 10(b) to Section 411(a) suits was proper under the DelCostello rational. Accord, Linder v. Berge, 567 F. Supp. 913 (D.R.I. 1983).

A close examination of the reasons stated by the DelCostello court for applying Section 10(b) to hybrid claims and by the Local Union 1397 court for applying Section 10(b) to Section 411(a) suits reveals that those reasons have little or no persuasive force to actions brought pursuant to Section 501. In ordinary hybrid claims and Section 411(a) suits, individual union members sue their unions for violations of one or more of the rights provided under Section 7 of the NLRA or section 411 of the LMDRA Unquestionably, such claims bear a close, family resemblance to unfair labor practice

charges under Section 8(b). Conversely, a suite under Section 501 against a union official for a breach of his fiduciary obligations neither constitutes nor resembles an unfair labor practice. A Section 501 suit is brought on behalf of the union to recover funds or other union property allegedly misappropriated by corrupt union officials. Unfair labor practice charges, fair representation claims, and Section 411(a) suits are brought against unions to redress allegedly wrongful union activity injuring individual union members. Moreover, the courts which have addressed the issue have uniformly held that a union cannot be sued for breach of a fiduciary duty under Section 501. Head v. Brotherhood of Railway Clerks, 512 F.2d 398 (2d Cir. 1975); Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir.), cert. denied, 409 U.S. 853 (1972); Aho v. Bintz, 290 F. Supp. 577

(D. Minn. 1968). See generally, Leslie Federal Courts and Union Fiduciaries, 76 Col. L. Rev. 1314, 1323 (1976) ("[T]he theory of the cause of action is that the fault is individual, not institutional. Plaintiff has not been harmed by the institution - rather, the institution, and incidentally the plaintiff, have suffered at the hands of the defendant officers."). The Court must conclude, therefore, that the first reason stated by the DelCostello court for adopting Section 10(b) as the governing rule of timeliness for hybrid claims has no application to Section 501 accounting suits.

The DelCostello court also found that by applying the limitations period of Section 10(b) to hybrid claims, the proper balance between the national interest in stable bargaining relationships and the individual employee's interest in a just settlement of

his grievance could be maintained. Since the actions which give rise to a hybrid claim have the same destabilizing effects on the collective bargaining relationship as does an unfair labor practice, the Court determined that a uniform limitations period governing each type claim would promote the desired stability of that relationship. However, this interest in securing a stable bargaining relationship is conspicuously absent from Section 501 suits. An employee's interest in ensuring that union funds and property are not misappropriated by corrupt union officials, and this prosecution of a Section 501 suit in order to protect those interests, would have little effect on the stability of the collective bargaining relationship. Accordingly, the second reason for applying Section 10(b)'s limitation period as recognized by the DelCostello court likewise has no application here.

Defendants strongly urge that even if the policy considerations present in DelCostello are not present here, Section 10(b) should still apply in order to promote uniform limitation periods for all causes of action grounded in federal labor law. Moreover, defendants claim that the holding in DelCostello compels this result. The Court is of the opinion, however, that defendants read DelCostello too broadly. The Court does not believe that the DelCostello court intended that Section 10(b) govern all claims grounded in federal labor law, especially since the Supreme Court apparently ruled that an employee's claim against the employer for breach of the collective bargaining agreement, without an accompanying fair representation claim against the union, would still be governed by the most appropriate state statute of limitations. See, Erkins v. United Steelworkers, 723 F.2d 837, 839 (11th Cir.

1984). For all of the foregoing reasons, the Court concludes that the limitations period of Section 10(b) should not govern Section 501 suits.

The question then becomes what limitation period should govern this Section 501 unit. To resolve this questions, the Court must first determine the essential nature of a Section 501 suit under federal law. See, Sewell v. Grand Lodge of International Association of Machinists & Aerospace Workers, 445 F.2d 545 (5th Cir. 1971), cert. denied, 404 U.S. 1024 (1972). Plaintiffs here seed to compel the defendants to account for the challenged expenditures from the strike fund. As the Fifth Circuit observed in Local No. 92, International Association of Bridge, Structural, and Ornamental Iron Workers v. Norris, 383 F.2d 735, 740, (5th Cir. 1967), the relief sought in such action is

euippable in both name and substance. Since an accounting is properly characterized as an equitable remedy, this Court must heed the admonition expressed by the Supreme Court in Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946):

> Traditionally and for good reasons, statutes of limitations are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determing that which is decisive for the chancellors intervention, namely whether the plaintiff has inexcusably slept on his rights so as to make a decree against the defendant unfair.

Accordingly, this action, grounded in equity, should be governed by the doctrine of laches rather than a statute of limitations. Morrissey v. Curran, 482 F. Supp. 31, 40 (S.D. N.Y. 1979), affirmed in pertinent part, 650 F.2d 1267 (2d Cir. 1981); Yablonski v. Mine Workers, ___F. Supp. ___, 80 L.R.R.M. 2594 (D.D.C. 1971).

In order to establish their defense of laches, defendants must prove that plaintiffs inequitably delayed in instituting this action and that defendants were unduly prejudiced as a consequence of such delay See, EEOC v. Dresser Industries, Inc., 668 F. 2d 1199, 1202 (11th Cir. 1982). Defendants point to the fact that by July 1978, plaintiffs were at least suspicious that defendants had used strike fund money to acquire items such as automobiles and various household furnishings. Since this action was not filed until May 1980, defendants assert that recovery on plaintiffs' claims should be barred by the doctrine of laches. However, the Court disagrees and concludes that defendants have failed to discharge their burden of showing an in equitable delay by plaintiffs in bringing this action or prejudice to defendants resulting

therefrom. See Morrissey v. Curran, 482 F. Supp. 31, 40 (S.D.N.Y. 1979), affirmed in pertinent part, 650 F.2d 1267 (2d Cir. 1981).

After the strike concluded and the NLRB certified the results of the May 1978 election, plaintiffs became suspicious that defendants had used money from the strike fund for their own personal benefit. However, plaintiffs had no tangible proof that any of the personal property acquired by defendants had been obtained by illegal means. Plaintiffs, who like defendants are unsophisticated in legal or financial matters, later discussed their concerns with William Caldwell, a representative of the International. Unsatisfied with his response, plaintiffs decided to hire an attorney and conduct their own investigation. They contacted Mr. Jacobson in late June 1979 and discussed with him

their concerns about the strike and defendants' possible embezzlement of strike funds. Mr. Jacobson explained that he could not accept the case until a retainer was paid to provide for all costs and expenses that would be required in investigating the case and filing any lawsuits against defendants. Plaintiffs did not have the money at this time, but they returned to Mr. Jacobson in October 1979 with the necessary funds to retain him.

On November 30, 1979, Mr. Jacobson traveled to Eufaula, Alabama, to investigate this matter. A meeting was arranged with Mrs. Sandra Ward, the wife of union leader Walter Ward. At this meeting, Mrs. Ward presented to plaintiffs and Mr. Jacobson copies of a number of cancelled checks which had been paid to the four defendants. These cancelled checks represented the first tangible evidence that defendants might have

misused strike funds for their own personal benefit.

After this information was received by plaintiffs, Mr. Jacobson contacted the International in December 1979 and again in January 1980 and demanded that the International file suite against the four defendants for breach of their fiduciary obligations. On January 16, 1980, the International responded by refusing to file suit. On February 11, 1980, Mr. Jacobson renewed his request with the International, and this time he included the information about the cancelled checks which had been provided to him by Mrs. Ward. After further correspondence was exchanged, the International again refused to file suit; instead the International stated that it was turning all strike records of Local 7326 over to the Department of Labor for its determination whether an investigation

should ensue. Unsatisfied with the International's inaction, plaintiffs took leave to file suit against defendants from this Court on May 1, 1980.

Under these circumstances, the Court concludes that plaintiffs should not be barred by the doctrine of laches. When plaintiffs were first presented with tangible evidence of possible embezzlement of strike funds by defendants, they promptly contacted the International and demanded a suit by instituted against defendants. They were required to make this demand before they could file suit themselves. 29 U.S.C.§ 501(b). Despite being presented with evidence of a possible misappropriation of strike funds, the International opted to turn the matter over to the Department of Labor instead of bringing suit and informed plaintiffs of its intentions. Less than three months later, plaintiffs commenced

this action. Such conduct does not evidence an unreasonable or inexcusable delay by plaintiffs. Furthermore, even assuming that plaintiffs were privy to sufficient information to bring this suit in July 1978, defendants have not even suggested how they were prejudiced by plaintiffs' delay in commencing this action. The only possible prejudice this Court can discern that defendants may have suffered as a result of plaintiffs' delay was the fact that their recollection of the pertinent events may have been blunted by the passage of time. However, defendants have introduced no evidence that suggests that had plaintiffs commenced this action earlier, they could have verified the challenged expenditures, or produced evidence that could have substantiated the reasonableness of these expenditures.

I(b). BULLARD'S INCLUSION AS A DEFENDANT

There is one final preliminary matter. The Court must determine whether George Bullard is a proper defendant in this action. Section 501(a) imposes fiduciary obligations only upon "officer, agent, shop steward, or other representative" of the union. 29 U.S.C. § 501(a). Naturally, George Bullard maintains that he was never an officer, agent, shop steward, or representative of Local 7326. The Court believes, however, the the evidence establishes otherwise.

Before and shortly after the commencement of the strike, George Bullard served on the union's negotiation committee that met with company representatives during bargaining discussions. When no agreement was reached with the company and the union decided to strike, George Bullard was placed in charge of the picket line, where his

duties included the purchase of picket and union hall supplies and the organization of manpower schedules for the picket line. Bullard Deposition, p.6; Bryan Deposition, p. 18. He also testified in his deposition that he was paid a salary ranging from $60.00-$150.00 per week for his effort in running the picket line. Bullard Deposition, pp. 14, 21. When the union decided to institute and pursue a boycott of the company's products, George Bullard played a significant role in the implementation of that boycott. In fact, Billy Bryan testified that George Bullard and Arthur Comer were "the main ones that ran the boycott." Bryan Deposition, p. 42.

the Act defines "officer, agent, shop steward, or other representative" in 29 U.S.C. § 402(q). This provision reads as follows:

> (q) "Officer, agent, shop steward, or other representative", when used

with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

See Note, The Fiduciary Duty Under Section 501 of the LMRDA, 75 Col. L. Rev. 1189, 1193 n.22 (1975). In accordance with this expanded view of those persons vested with fiduciary obligations, the Court must conclude that George Bullard is a proper

defendant in this Section 501 suit and may be liable for any misuse by him of strike funds.[3/]

II. ALLEGED MISAPPROPRIATION OF FUNDS BY DEFENDANTS

The Court now turns its attention to plaintiffs' specific allegations of impropriety by the defendants.

As noted earlier, approximately three hundred members of Local 7326 went on strike in December 1976. In order to assist these strikers, a strike and defense fund was established by the officers of Local 7326 in accordance with the directions from the International. This account was funded by

3. George Bullard points to the fact that he was dismissed as a defendant from the parallel criminal proceeding when the trial court concluded that the evidence was insufficient to warrant a finding that he was an "officer" of Local 7326 within the meaning of Section 501(c). The different burden of proof between criminal and civil cases, however, forecloses any preclusive effect that decision might have in the present case.

the International, and the amounts periodically sent were determined by multiplying the number of strikers (300) by the weekly rate of strike benefits (originally $20.00, but increased to $30.00 in September 1977). This rate of calculation remained constant throughout the strike despite the fact that many of the members of Local 7326 eventually abandoned the strike and at such time received no weekly benefit.

The total expenditures from the strike and defense fund for the three hundred members of Local 7326 exceeded $450,000.00 of this amount, the four defendants received approximately $140,000.00, or thirty-one percent. The average amount thus received by each of the four defendants was $35,000.00 for the period of the strike, approximately eighteen months. while the Court does not believe that these amounts or

the high percentage of the total received by these four defendants by itself proves embezzlement or misappropriation of strike funds, it does at least demonstrate a need to closely examine the challenged expenditures to determine whether any such expenditure was either not authorized by the appropriate officials or unreasonable in amount. The checks received by defendants may be grouped into three categories: (1) trip expenditures; (2) strike benefits and other related expenditures; and (3) third-party expenditures. The court will examine each category of checks in turn.

II(a). TRIP EXPENDITURES

As noted earlier, defendants were often required to travel to various location in seeking support for the boycott. Other trips were for conferences with union officials and attorneys in Birmingham, contract negotiations in Atlanta and Mobile,

and NLRB charges in Montgomery. No one questions the legitimacy of the purpose of these trips.[4/]

It is not altogether certain from the evidence who decided that a particular trip was necessary Billy Bryan testified that he occasionally decided a trip should be taken. On other occasions, the strike committee requested one or more of the defendants to travel to a certain location on union business. In any event, the four defendants were involved in nearly every trip; rarely did anyone other than the defendants participate. Arthur Comer testified in deposition that the membership selected him to go on trips to

4. Plaintiffs do, however, contest the legitimacy of several trips taken by defendants subsequent to the conclusion of the strike. For the reasons stated herein, the Court shall not compel defendants to reimburse the union for strike funds received for trips taken subsequent to May 18, 1978, the date the election was lost.

promote the boycott. Comer Deposition, p. 19. Charlie Greene stated that he first became involved with the trips by volunteering, and he further stated that anyone who volunteered could have gone. Billy Bryan testified that he knew of no one who was denied the opportunity to participate in the trips if he had requested that opportunity. The Court does not find unreasonable the fact that only these four defendants participated in the great majority of the trips. Nor shall it require reimbursement from these defendants solely for that reason. Reimbursement, if required shall be for the sole reason that the amounts which defendants took for themselves allegedly to cover their expenses were manifestly unreasonable in light of all the circumstances. Moreover, there is some burden on officials who receive such substantial amounts of money to prove the

reasonableness of the sums taken by them. Brink v. DaLesio, 667 F.2d 420, 424 (4th Cir. 1981).

Once it was deemed necessary to take a trip, those who were to make the trip went to the strike committee to get expense checks. Normally, these checks were obtained by each defendant before the trips were taken. However, on a few occasions defendants obtained the check after they returned; also, one defendant would occasionally pick up his check and the check provided by the strike committee for the other person or persons who were to accompany him on the trip. Bryan's Deposition, p. 12.

The amount of the check was allegedly determined by estimating the mileage to and from the location along with the number of days the trip was expected to take. Estimates were purportedly based on expenditures required on previous trips to

the same location. Defendants were allowed $50.00 per day to cover their meals and lodging.[5/] Defendants stated that they ordinarily stayed in separate rooms, and Howard Strevel, a representative of the International, testified that this practice was not unreasonable. Nor does the Court find this practice unreasonable, although in view of the precarious finances of the striking employees more economical arrangements would have been more prudent. Mileage expenses were computed at a rate of fifteen cents per mile. However, despite the surprising testimony from Charlie Green and George Bullard to the contrary, obviously only those who furnished the car and provided the gasoline were entitled to reimbursement for mileage. Howard Strevel

testified to the obvious fact that it would be improper for a defendant to be reimbursed for mileage expenses when he was merely a passenger. No one, however, turned in any receipts or other documentation of actual expenditures on any trip.[6/]

According to defendants, money allocated to a particular person would not necessarily be spent solely by that individual. Sometimes those who went on a particular trip would pool their money because it was difficult to estimate one's expenses

6. Arthur Comer testified, however that he kept his receipts from these trips in a cardboard box located at the union hall. These receipts were not produced as evidence at trial, and no one knew of their whereabouts.

precisely. Extra money given to one defendant would be used by another defendant during the trip.[7/]

The boycott placed significant demands on defendants' time. Their trips took them to various cities and ports in West Virginia, South Carolina, Georgia, Florida, Mississippi, Louisiana, and Alabama. Billy Bryan testified that the defendants were required to take trips in support of the boycott almost continually during the final months of the strike. At time defendants testified they would return home from one trip and have to leave immediately on another trip. Bryan's Deposition, p.34.

7. Several of the defendants and William Caldwell testified that in addition to their own meals, defendants often would buy dinner and drinks for the representatives of the local unions whom defendants were urging to support the strike and boycott. The Court does not find this practice unreasonable. Again, however, there are no records and defendants were unable to recall specific instances where such expenditures were made.

The trips did not always have a precise destination. There were numerous stops along the way. Defendants frequently followed the company's trucks to a certain destination, where, upon arrival, defendants would meet with representatives from the local unions and urge them to support the strike and boycott. Occasionally, when the defendants would travel to a particular site, they would conclude their business at that location and then travel in a different direction to another site. Comer's Deposition, pp. 10-12. Moreover, once the defendants reached a particular destination, they would often split in different directions to visit other sites to promote the boycott.

On many occasions, more than one automobile was taken on a trip. Charlie Greene testified that when all four leaders went on a particular trip, the normal

procedure was to take two automobiles, since the defendants would often travel in different directions to other sites once they reached their primary destination. Arthur Comer also testified that sometimes it became necessary for one person to stay at a particular destination while another defendant returned to Eufaula with information about the progress of the boycott. At other times one or more of the defendants would have to return to Eufaula to resolve various problems that arose on the picket line or at the union hall.

In nearly every instance, defendants were unable to recall where they travelled on a particular trip, where they stayed, the duration of the trip, or how many cars were taken on the trip. Their only recollection was that they were certain that they travelled during the strike to the various locations previously mentioned, and that

those trips occupied a substantial portion of their time, especially during the latter stages of the strike. Of course, defendants maintain that all funds provided to them for these trips were proper.[8/]

While the Court will not require defendants to reimburse all strike funds given to them for trip expenses on the ground that they kept inadequate records or were unable to remember after six years where and how the money was spent, at the time it cannot exonerate defendants where they kept inadequate records and received what clearly appears to be excessive amounts simply because their memory failed them. Were the Court to do so, it would establish a precedent that would allow union officials

8. Both Charlie Greene and George Bullard testified that they returned from some trips with excess money. They both testified that this extra money was used, however, on subsequent trips.

to escape liability under Section 501 by merely confession a lack of records and memory. Rather, the Court must examine each challenged trip expenditure in light of the standards enunciated in Morrissey, supra, and determine whether a particular expenditure is so manifestly unreasonable as to evidence a breach of the fiduciary obligations imposed upon defendants by Section 501(a). Obviously this cannot be done with exactness. The Court attempts the task in an effort to be fair to the defendants who did most of the work during the strike, but with an awareness that some of the sums paid to defendants appear excessive and not reasonably justified.

Since defendants could not remember where they travelled on any trip, where they stayed, the trip's duration, or how many automobiles were taken, the Court will determine the reasonableness of the amount

of a particular check by generously allowing for a three-day trip of 800 miles with two automobiles.[9/]

Where the amount received by a defendant exceeds the sum of reasonable expenses so incurred by him, a reimbursement of this excessive amount will be ordered. For example, assuming two defendants took a trip for the union and each received a check for $300.00. Allowing for a three-day trip of 800 miles with two automobiles each defendant would be entitled to receive $270.00 ($150.00 for meals and lodging and $120.00 of mileage expenses), or a sum of $540.00. After subtracting $540.00 from the sum of the two checks received by

9. On those occasions where Charlie Greene and only one other defendant took a trip for the union and received a check, the Court will only allow for mileage expenses for one automobile since Greene testified that he drove his automobile on only one trip.

defendants, the Court would reach a figure of $60.00 which represents the total amount of excessive, unauthorized strike fund expenditures, and after further dividing that sum by two, the Court would order each defendant to reimburse $30.00 to the union.

Some trips undoubtedly took more than three days and covered more than 800 miles. At the same time, however, many trips took greatly less than three days, covered substantially less than 800 miles and were traversed in only one automobile. Although the Court's analysis has its shortcomings, the Court believes that a more precise or fairer analysis is unattainable.

Defendants received approximately $35,300.00 as compensation for expenses incurred for trips taken on behalf of the union. The number of trips reportedly taken by each defendant and the money received as

compensation therefor are as follows:

DEFENDANT	NUMBER OF TRIPS	MONEY RECEIVED
Charlie Greene	30	$ 9,667.00
Arthur Comer	32	10,440.51
George Bullard	26	9,279.01
Billy Bryan	22	5,937.00

After examining each trip taken by defendants using the aforementioned analysis (except for those challenged trip expenditures specifically discussed below), and arriving at a figure which represents the some of reasonable expenses incurred by each defendant on a particular trip, the Court determines that defendants should repay to the union the following amounts, which represent the total amount of excessive unauthorized strike fund expenditures:

DEFENDANT	AMOUNT
Charlie Greene	$4,422.41
Arthur Comer	3,206.41
George Bullard	2,684.08
Billy Bryan	1,843.08

As previously mentioned, a discussion of several of these trip expenditures is in order. Where reimbursement to the union is in order, the amount of reimbursement has already been included in the above-listed amounts for each defendant.

On or about November 9, 1977, defendant Greene took a trip for the union and received a check for $430.00. At trial, he did not remember the purpose of the trip, where he travelled, or how long he stayed. He testified that he only took his car on one occasion and the Court will treat this trip as that occasion. Allowing for a three-day trip of 800 miles, the Court arrives at a figure of $270.00, which represents the sum or reasonable expenses

incurred by Greene on this trip. After subtracting $270.00 from $430.00 to reach an amount of $160.00, which represents the total amount of excessive, unauthorized expenditures the Court concludes that Greene should repay $160.00 to the union.

Five days later, on November 14, 1977, Greene received another check for $430.00. The stated purpose for this check was "Union Business." Although he could not remember what "union business" meant, he testified that he probably received this check to cover expenses for a trip. However, since he testified that he drove his automobile on only one occasion, and since the court had just previously analyzed a trip expenditure where he was the only defendant who took a trip and received money therefor, the Court must conclude that this expenditure is wholly unauthorized and that Greene should repay the entire amount of this check

($430.00) to the union. The same analysis applies to check numbers 4604 ($300.00), 6267 ($300.00) and 6751 ($375.00), which Charlie Greene received as reimbursement for trip expenses on December 13, 1977, April 17, and June 10, 1978, respectively, and the Court concludes that Greene should repay the sum of these three checks ($975.00) to the union.10/

On or about November 21, 1977, defendant comer received a check for $200.00. On or about November 22, 17=977, another check for $305.00 was made out to comer. He testified that these checks were undoubtedly given to him for trips. He further testified that it would be improper to attach significance to

10. Greene attempted to explain his receipt of these checks by testifying that the check may have been issued to him to cover his and another defendant's trip expenses. Unquestionably, such practices did occur. However, on such occasions, the records would clearly indicate that a particular check was intended to cover the trip expenses of more than one defendant. See, e.g., Check Number 5479.

the fact that the checks were written only one day apart. He stated that this should not be taken to mean that the first trip lasted only one day; often a check for a particular trip would be were written several days before or after the date the trip was actually taken. The Court credit this testimony as accurate since other defendants testified similarly. Therefore, the Court will allow for a six-day trip of 1,000 miles and arrive at a figure of $450.00, which represents the sum of reasonable expenses incurred by Comer on these two trips. After subtracting $450.00 from the sum of the two checks ($505.00) to reach an amount of $55.00, which represents the total amount of excessive, unauthorized expenditures, the Court concludes that Comer should repay $55.00 to the union.[11/]

11. The same analysis applies to the check for $172.00 which Comer received on April 22, 1978. Plaintiffs contend that Comer could not have used this check for a

two automobiles, the court arrives at a figure of $540.00, which represents the sum of the reasonable expenses incurred by Bullard and the unknown traveler. After subtracting $540.00 from $670.00 to reach an amount of $130.00, that represents the total

11. Continued On or about December 17, 1977, defendant Bullard took a trip to Mobile for the union and received a check for $670.00. The financial records indicate that this check was to cover expenses for tow people to travel to Mobile. Bullard could not recall who travelled with him on this trip, and the records give no clue. The Court will give Bullard the benefit of the doubt since the voucher indicates someone else was to accompany him on this trip. Assuming a three-day trip of 800 miles and allowing for trip since he received another check that same day to cover expenses for a trip he was to take with Bullard. See check number 6345. This contention ignores, however, Comer's testimony that he often received his trip expense check after he returned from a trip. The Court will treat his receipt of this check as such an occasion. Allowing for a two-day trip of 800 miles, the Court arrives at a figure of $220.00, which represents the sum of reasonable expenses incurred by Comer on this trip. Since the sum of his reasonable expenses exceeds by $48.00 the check he received, the Court will offset this $48.00 against the amount of excessive, unauthorized expenditures previously calculated by the Court.

amount of excessive, unauthorized expenditures, and after dividing $130.00 by two, the Court concludes that Bullard should repay $65.00.

On or about January 6, 1979, defendant Bullard received a check for $735.00. although the records do not indicate the purpose of this check, the check stub indicates that it was used for a trip for the union. Bullard could not recall where he went on this trip or if anyone accompanied him. He did recall that his furthest destination on these trips was West Virginia. The Court will assume that he traveled to West Virginia on this trip. Allowing for a six-day trip of 2,000 miles, the Court arrives at a generous figure of $600.00, which represents the sum of the reasonable expenses incurred by Bullard on this trip. After subtracting $600.00 from $735.00 to reach an amount of $135.00, which

represents the total amount of excessive, unauthorized expenditures, the Court concludes that Bullard should repay $135.00 to the union.

On or about January 13, 1977, Billy Bryan was given a check for $70.00 for the purpose of attending contract negotiations in Atlanta, Georgia. He cashed the check out of funds from his church and was prepared to travel to Atlanta when, unexpectedly, he had to remain at home with his wife who was giving birth to his youngest child. He testified that he gave this money to Frazier Farrier, his substitute at the Atlanta negotiations. plaintiffs challenge his testimony since there is no documentation that this $70.00 was actually given to Mr. Farrier. After hearing Mr. Bryan's testimony concerning this matter, the Court credits his testimony

and will not require reimbursement of the $70.00.

On or about April 10, 1978, Billy Bryan received a check for $310.00. The financial records indicate that this check was issued to cover Bryan's expenses on a trip. Plaintiffs contend that Bryan never used this money for a trip since the check was endorsed to Sears and used as a partial payment of an air conditioner that he had purchased at Sears. However, the mere fact that this check was endorsed to Sears does not prove that Bryan never went on this trip or that he failed truthfully to disclose to the strike committee the real purpose for this check. Since defendants testified that occasionally they would receive their trip expense checks after they returned from a trip, the Court will treat Bryan's receipt of this check as such an occasion and will

not order full reimbursement.[12/] Rather, allowing for a three-day trip of 800 miles, the Court arrives at a figure of $270.00, which represents the sum of reasonable expenses incurred by Bryan on this trip. After subtracting $270.00 from $310.00 to reach an amount of $40.00, which represents the total amount of excessive, unauthorized expenditures, the Court concludes that Bryan should repay $40.00 to the union.

On June 24, 1978, defendant Bryan took a trip for the union and received a check for $150.00. This trip occurred weeks after the strike concluded Bryan testified that following the conclusion of the strike,

12. The same conclusion applies to check numbers 5567 ($200.00) and 5743 ($342.50), both of which were used as payments for furniture which Bryan purchased at the Gunter-Dunn Furniture Company. These two checks were previously analyzed and included in the group of trip expense checks discussed earlier.

unfair labor practice charges were filed against the company, and that pursuant to these charges being filed, he travelled to Birmingham on several occasions to meet with representatives from the International and its attorneys. Plaintiffs' challenge to Bryan's receipt of this money in denied.

On or about May 27, 1978, defendants Greene, Comer, and Bryan took a trip to Tampa for the union and each received a check for $425.00. This trip occurred after the strike was over. Defendants claim that the boycott was still in operation, and a trip was necessary to inform local unions that the strike had been lost Plaintiffs not unreasonably contend that the objectives of the trip could have been accomplished by telephone, but the court will not substitute its judgment as to the propriety of this trip for that of the union leaders. The reasonableness of the expenditures, however,

is subject to the same analysis heretofore subjected to all previous trip expenditures. Allowing for a three-day trip of 1,000 miles with two cars, the Court arrives at a figure of $750.00, which represents the sum of the reasonable expenses which will be allowed to these defendants on this trip. After subtracting $750.00 from the sum of the three checks ($1,275.00), the total amount of excessive, unauthorized expenditures is $525.00. The Court concludes that Greene, Comer, and Bryan should each repay $175.00 to the union.

On or about June 3, 1978, defendants Greene, Comer and Bryan took another trip for the union. Greene received a check for $450.00, Comer received a check for $425.00, and Bryan received a check for $395.00. Although he was not certain about the destination of this trip, Greene testified

that he thought the defendants travelled to numerous cities and docks in Georgia, South Carolina, and Florida to spread the work about the election and the union's continued efforts in support of the boycott. Again, the Court will not substitute its judgment as to the propriety of this trip, but it will assess the reasonableness of the expenditures. Generously allowing for a four-day trip of 1,200 miles and two cars, the Court arrives at a figure of $960.00, which represents the sum of the reasonable expenses incurred by these defendants on this trip. After subtracting $960.00 form the sum of three checks ($1,270.00), the total amount of excessive, unauthorized expenditures is $310.00, and the Court concludes that Greene, Comer and Bryan should each repay $105.00 to the union from the sums they received for this trip.

II(b) STRIKE BENEFITS AND OTHER RELATED EXPENDITURES

A second group of checks received by defendants and challenged by plaintiffs may be collectively referred to as strike benefits and other related expenditures. In these challenges, plaintiffs place primary emphasis on the fact that defendants generally received more strike benefits per month than other strikers. Plaintiffs therefore demand reimbursement of an amount equivalent to the excess of the monthly strike benefits received by each defendant over the amount of monthly strike benefits received by the average striker during the same time period.[13]

13. Prior to September 1977, the normal amount of strike benefits each striker was authorized to receive if he performed the minimum amount of work for the union was $20.00 per week, or $85.00 per month. After September 1977, this amount was increased to $30.00 per week or $125.00 per month. Also, each striker received a $75.00 Christmas bonus in December 1977.

Since there are over one hundred twenty five checks received by defendants in this second category of challenged strike fund expenditures, the Court first will list the checks received by each defendant in Appendix A. The Court then will proceed with a general discussion of whether the receipt of these checks by defendants was authorized and whether the amount was reasonable. following this general discussion, the Court will analyze several of the more questionable checks received by each defendant. See Appendix A.

The determinative issue for the Court is whether defendants were accorded improper, preferential treatment over the rank and file members in the receipt of strike benefits, taking into account the defendants' greater expenditures of time and

effort in furtherance of the strike and their forbearance of other employment opportunities in order to maintain the strike. Plaintiffs would have this Court hold that regardless of the greater efforts expended by defendants in comparison with the average striker, defendants should receive no greater amount of benefits. However, if defendants' efforts during the strike were materially greater than those of the average striker, then this Court believes that it would be unreasonable to limit them to comparable strike benefits. Indeed, a contrary result would inhibit members from providing the necessary day-to-day leadership of the strike if uncommon effort would receive no more consideration than the limited activity of the rank-and-file member who merely walked his eight-hour shift each week on the picket line. Moreover, the Court is not at liberty

to revise any compensation arrangements merely because they may have been more generous than the Court might have established. Morrissey v. Curran, 650 F.2d 1267, 1275 (2d Cir. 1981). The Court's task is limited to a comparison of the hours expended and benefits obtained by defendants with the hours expended and benefits obtained by their average striker. Only where the differential in compensation in manifestly unreasonable on such an analysis will this Court find a violation of Section 501(a).

The Court finds that the average striker would receive $30.00 per week after September 1977 for walking one eight hour shift at the picket line. If the striker walked more than one shift, he would receive $30.00 for each additional shift.

Charlie Greene testified that the strike committee authorized his receipt of $30.00

per day as compensation for his assisting the treasurer, Walter Ward, in the preparation of the strike ledgers and financial reports. He testified that he worked on the ledgers and other financial books from three to four days per week, every week. When Ward abandoned the strike and returned to work for the company, Greene assumed the full duties of the Treasurer. William Caldwell testified that it was not uncommon for those who worked on financial records during a strike to receive additional compensation therefor. Greene also testified that in addition to his work on the books, he occasionally walked shifts on the picket line. Finally, his role in maintaining the boycott involved his making numerous long trips.

Arthur Comer testified that he received extra strike benefits for his role as a picket captain for the third shift, which he

testified in his position required his presence every day on the picket line between 11:00 p.m. - 7:00 a.m. Comer's Deposition, pp. 41-42. Once the boycott began, he also made numerous trips for the union.

Billy Bryan testified that his duties as President of Local 7326 required him to work twelve to sixteen hours per day for five to six days per week, sometimes sever. He stated that he did not have time for other jobs; he also stated that other strikers, most notably Walter Ward, asked him to forego other employment and devote his full time and efforts to running the strike. Since his home was more than twenty-five miles from the union hall and picket line, and since his duties required him to make this trip nearly every day, the strike committee authorized him to receive $50.00 per week to cover his expenses of travel to

and from home. The committee also agreed to pay for his personal bills such as mortgage and utilities. He also was required to take numerous, lengthy trips for the union in support of the boycott.

George Bullard testified that members of the strike committee approached him and asked him to oversee the picket line and union hall operations during the strike. this was a full-time job which required him forego employment elsewhere. In return for his agreeing to oversee the picket line and union hall, the strike committee offered to pay his monthly bills. His responsibilities in maintaining the picket line and union hall included the purchase of necessary supplies. He testified that he would purchase these supplies with his own money, take the receipt to the strike committee, explain the reason for the purchase, and receive reimbursement therefor. Since he

also participated in the boycott trips, he was required to spend a large amount of time on the road in furtherance of the boycott.

After examining the evidence with an eye toward the quantity of work for the union performed by defendants vis-a-vis the average striker, a clear picture emerges. While some strikers worked diligently for the union, expending great effort and foregoing other employment, the evidence conclusively shows that no one placed more time and effort into the stride than defendants, especially when considering the trips taken by defendants on behalf of the union. William Caldwell and Howard Strevel testified that it is expected that those who perform greater service for the union in aid of the strike will receive more compensation from the strike fund. With many strikers abandoning the cause, finding jobs elsewhere, or expending as little effort as

possible to continue receiving strike benefits, it is the strike leaders who often save the strike from collapse, hence the need for greater compensation.

In light of the foregoing evidence, the Court must conclude that the disparity in strike benefits between defendants and other strikers was not so unreasonable as to establish a per se violation of Section 501(a). Despite the Court's general acceptance of the checks listed in Appendix A as both authorized and reasonable, a discussion of a few of the more vigorously challenged checks in in order.

On or about October 1, 1977, Charlie Green received a check for $300.00 with the stated purpose "strike benefit/medical expense." He explained during the trial that his wife underwent surgery at the Barbour County Hospital during this time period and this check undoubtedly was used

to defray a portion of those medical costs. Since many checks were written on the strike fund account for the payment of strikers' medical bills, the Court finds this expenditure reasonable.[14]

On or about September 3, 1977, Arthur Comer received a check drawn on the strike fund account in the amount of $228.00. The purpose stated in the ledgers for this check was "Five Weeks Strike Benefits." An examination of the August 1977 ledger reveals that Arthur Comer in fact received no strike benefit checks in August. Accordingly, the Court finds this strike fund expenditure reasonable.

On or about June 10, 11978, Billy Bryan received a check drawn on the strike fund account in the amount of $175.00. The purpose stated in the ledger for this check

14. Charlie Greene testified that the need for this check was fully disclosed to the strike committee at the time or

receipt. The Court, therefore, will not accept plaintiffs' argument that since Greene could not produce the medical bills at trial, this strike fund expenditure should be found unauthorized and ordered reimbursed. The Court credits Charlie Greene's testimony of full disclosure of and a documented need for this payment.
was "Personal Bills." Plaintiffs contend that since the records do not indicate which bills were paid with this check, and since no receipts were offered by Bryan as supporting documentation for this check, then this expenditure should be repaid to the union. The Court disagrees. The financial records indicate that the only other monthly bill which was paid with strike funds in June 1978 was a water bill for $14.20 owed to the Bakerhill Water Authority. See Check No. 6787. Furthermore, Bryan testified that he continued to work for the union weeks after the election was lost, which indicted to the Court that his receipt of these strike funds for the payment of monthly bills was

reasonable.

On or about December 3, 1977, Billy Bryan received a $300.00 loan from the strike fund. The financial records indicate that this loan was repaid in full, and Bryan testified that repayment was accomplished by his performing additional work for the union. Plaintiffs contend that the additional checks Bryan received in December 1977 for strike benefits and monthly bill payments more than compensated Bryan for any extra work he performed for the union Given the undisputed testimony that Bryant often worked from twelve to sixteen hours per day for six to seven days per week, the Court credits Bryan's testimony concerning repayment of this loan and concludes that reimbursement is not required.

All defendants except Bullard received checks several months after the strike ended, which were authorized by William

Caldwell for the purpose of compensation for "lost time and expenses." The check Comer received in December 1978 is fully documented and explained in Defendants' Exhibit No. 2. As for the checks received by Greene (#6812) and Bryan (#6814), defendants testified that they often had to meet with Mr. Caldwell and other representatives form the International after the strike concluded because the union had filed NLRB charges against the company. Additionally, certain financial reports required by the Department of Labor had to be completed and assistance was needed form Bryant and Greene in order to accomplish this task, the Court finds these strike fund expenditures, which were duly authorized by Mr. Caldwell, to be reasonable and not violative of Section 501(a).

Having examined each check in this second category of strike fund expenditures,

the Court concludes that defendants, in receiving these checks, did not breach any fiduciary duties imposed upon them by Section 501(a). This conclusion is based upon the Court's belief that greater financial assistance was due defendants as compensation for their greater expenditure of time and effort toward the furtherance of the strike.

II(c). THIRD-PARTY EXPENDITURES

The third and final category of checks received by defendants and challenged by plaintiffs may be collectively referred to as third-party expenditures. These checks represent instances where defendants used strike funds to pay personal bills or other obligations unrelated to the union business. As with the trip expense checks

received by defendants, the Court has analyzed each challenged expenditure and determined whether it was so manifestly unreasonable as to evidence a breach of the fiduciary obligations imposed upon defendants.

On or about March 25, 1978, defendant Greene received a check for $312.00 with the stated purpose of "tires and car repair." Green testified that he only used his automobile on one trip. Howard Strevel, the representative form the International, stated that it would be an unauthorized strike fund expenditure for a striker to have his automobile repaired and new tired installed if that automobile were not used primarily for union business. Under these circumstances, the Court is of the opinion that Greene should not have received strike funds for new tires and car repairs. The same result holds for the $200.00 check he

received on April 29, 1978, with a stated purpose "M. N. Hughes Tire Co." The Court must conclude that Greene should reimburse the union in an amount equivalent to the sum of these two checks ($512.00).

A similar result should apply to Greene's receipt of check number 5923 ($128.52 - payable to Sears), George Bullard's receipt of check number 6717 ($120.00 - payable to Skinner Furniture), and Billy Bryan's receipt of check numbers 6175 ($150.00) and 6732 ($75.00), both payable to Ezzell's, a retail clothing establishment. Greene could not recall what he purchased with his check made payable to Sears. Bullard used his check to purchase a mattress; prior to receiving this check, Bullard had begun work at Cutler Egg Products. Bryan used his checks to pay in full a clothing bill at Ezzell's. While the Court accepts as reasonable defendants' use

of strike funds to pay monthly obligations such as mortgages, automobile loans, and utility bills, the Court cannot find reasonable defendants' use of strike funds to purchase these various items of personal property, especially where there was no evidence that other strikers were given strike funds to make similar purchases and compensation to these defendants was already greatly in excess of benefits to other strikers. Accordingly, the Court concludes that defendants should repay the aforementioned amounts to the union.

On March 7, 1978, Greene received a check for $840.00 from the strike fund and used that money to pay in full a debt he owed to the Pacific Finance Company. Charles Cook, office manager at the Dothan branch of Trans-America Financial Services, which during the strike was doing business as the Pacific Finance company, testified at

the criminal trial that Pacific Finance Company would have been willing to continue accepting the small monthly payments of $20.00 that Greene had been making theretofore. Plaintiffs' Exhibit No. 13. He also testified that on February 24, 1978, Mrs. Greene called him to inquire about the possibility of settling the account in full. He told Mrs. Greene that the company would accept $840.37 as full payment on the account Nearly two weeks later, he received a check from Mr. Greene for $840.00. William Caldwell testified that it would be an unauthorized strike fund expenditure for a stiker to pay a bill in full when the creditor was willing to continue receiving smaller monthly payments. Under these circumstances, the Court must conclude that payment in full of this credit account was an unreasonable strike fund expenditure. However, the Court will consider reasonable

a portion of this payment that represent six monthly payments of $20.00, or $120.00, which signifies a period from March through August when Greene was on strike or unemployed immediately following the strike. Accordingly, the Court concludes that Greene should repay $720.00 to the union.

On May 13, 1978, Greene received a check for $419.80 from the strike fund and used that money to pay in full a VISA account Greene maintained with the First National Bank of Mobile. Mike Bishop, a credit card officer with the bank, testified at the criminal trial that Greene's account was current at the time full payment was made. Plaintiffs' Exhibit No. 14. He also testified that the bank would have been willing to continue accepting the $25.00 monthly payments that Greene had made theretofore. For the same reasons the court

found unreasonable the use of strike funds to pay in full the debt owed to the Pacific Financial Company, it finds this payment unreasonable. Again, however, it will allow as a reasonable expenditure $100.00, which represents monthly payments of $25.00 from May through August, the date Greene gained full-time employment. Accordingly, the Court concludes that Greene should repay $319.80 to the union.

On June 24, 1978, Greene received a check for $175.00 form the strike fund and used that money for a car payment. Plaintiffs contend that this check, written some five weeks after the strike concluded, is manifestly unreasonable The Court disagrees. Mr. Caldwell informed the four defendants in either April or May 1978 that they could use strike funds to make post-strike payments on their mortgages or automobile loans. The reasons stated by Mr.

Caldwell for this special treatment is that strike leaders typically find it more difficult obtaining employment after a strike than do rank and file members. Mr. Strevel testified that it was common practice for strike leaders to receive these post-strike payments. In view of these circumstances, the Court cannot conclude that this use of strike funds by Greene was either unauthorized or unreasonable, particularly where the International, whose agent authorized the payment, is the party for whose benefit this suit is maintained.

On or about March 18, 1978, Bullard received a check for $136.00, with the purpose of the check being payment of his utility bills and a bill at Hughes Tire Company. He received a check for $312.00 on March 27, 1978, for the purpose of automobile repairs and net tires. Both Howard Strevel and William Caldwell

testified that such a payment would be a proper strike fund expenditure if the donee of such payment used his automobile on union business. Since Bullard extensively used his automobile for union purposes such as boycott trips and maintaining the picket lines, the Court finds these two checks to be authorized, reasonable strike fund expenditures.

On June 10, June 17, and June 24, 1978, Bullard received checks of $120.00, $75.00, and $100.00, respectively. There was no stated purpose for the first two checks, but "utilities" was the stated purpose for the third check. Plaintiffs contend that since the election was lost on May 18, 1978, and since Bullard went to work with Cutler Egg Products at approximately the same time the election was lost, these checks cannot be authorized strike fund expenditures. Regarding the first two checks with no

stated purpose, Bullard testified that he normally purchased the necessary supplies for the picket lines with his own money and would obtain a receipt therefor. He would then take the receipt to the strike committee and receive reimbursement for his expenses. He also testified that occasionally he would not seek reimbursement for each purchase of supplies for the picket line until weeks later. Although Bullard could not recall whether these checks represented an occasion when he received late reimbursement for earlier purchases of picket line supplies, the Court will treat these checks as such late reimbursements as will not require his repayment of this money to the union. Alternatively, the Court could treat these checks as representing compensation to Bullard for the assistance he provided the union on Saturdays after the strike was lost. The court does not

believe, however, that it was reasonable that his utility bills should be paid with strike funds a full five weeks after he was employed with Cutler. Accordingly, the Court concludes that Bullard should repay this $100.00 to the union.

On May 27, 1978, Comer received a check for $310.26 and used that money for the payment of an automobile loan he had with Central Bank. William Caldwell had previously authorized defendants to use strike funds to meet their loan obligations because strike leaders often had difficulty securing employment after the strike. This authorization, coupled with the fact that hundreds of strikers' loan obligations had been paid with strike funds, leads this Court to conclude that this expenditure of strike funds was both authorized and reasonable. The same analysis applies to Comer's receipt of a check for $165.00 on

June 10, 1978, said check being written to cover another loan obligation at Central Bank.

On or about January 28, 1978, Bryant received a check for $130.00, and on March 4, 1978, he received another check for $200.00. The purpose stated for both checks was payment of "medical bills." Plaintiffs contest these strike fund expenditures on the ground that they lacked the proper description of the health carrier involved. Plaintiffs point to the fact that Bryant received other checks for the payment of medical bills that clearly denoted the physician or health institution to which payment was made. Bryant testified, however, that his duties never included responsibility of entering the strike fund disbursements into the ledger or journal. The fact that the in financial records, which were prepared in different ways by

different people, do not indicate the health carriers to whom these payments were made does not, in this Court's opinion, necessarily render those checks unauthorized. The Court credits Bryant's testimony of a disclosed need for these checks and concludes that reimbursement is unnecessary.

On or about December 22, 1977, Bryant received a check for $76.05 for payment of his automobile insurance premium. A second premium was paid by a check for $70.60 which Bryant received on May 27, 1978. These two checks covered insurance on his 1972 Buick. Previously, on February 8, 1978 and on April 10, 1978, he had received checks of $161.68 and $295.75, respectively, for payment to Ladon Parmer Garage for repair work on this 1972 Buick. On March 25, 1978, Bryant purchased a 1977 Buick, and on April 1, 1978 he received a check for $126.20 for payment

of the insurance premiums on this second automobile. Plaintiffs challenge each of these strike fund expenditures.

After examining the evidence introduced at trial, including the testimony of Gary Daniels at the criminal trial (Plaintiffs' Exhibit No. 31), the Court finds these strike fund expenditures reasonable. First, the need for payment of these insurance premiums was unquestionably present. Gary Daniels, an employee with Farm Bureau Insurance Company, testified that had Bryant not timely paid his premiums when due (and they were due), the policies covering these automobiles would have been cancelled. Second, Bryant used both automobiles extensively for union purposes. He testified that everyday travel to and from Eufaula, combined with the long trips in support of the boycott, finally took its toll on the 1972 Buick. He was forced to

purchase the 1977 Buick, and he frequently used this automobile on boycott trips and other travel to and from Eufaula. The fact that both automobiles were used primarily for union business buttresses this Court's belief that the above strike fund expenditures were reasonable. Other strikers were given checks for payment of automobile insurance premiums to avoid cancellation of the policies, even where there is no indication that said automobiles were used occasionally for union business. For all of the aforementioned reasons, the Court finds these strike fund expenditures reasonable.[15]

On or about March 13, 1978, Billy Bryan received a check for $678.40 and used this check to pay in full the loan account on his

15. The same analysis and results applies to Bryan's receipt of a check for $136.00 on April 22, 1978, said check being issued for the payment of mechanical

breakdown insurance on the 1977 Buick.

The Court also finds reasonable Bryan's receipt of strike funds to pay in full the loan account for his 1972 Buick. The strike committee authorized his receipt of these funds, undoubtedly in recognition of the fact that Bryan's extensive, union-related travel finally took its toll on this automobile.
1972 Buick, which was three months past due at the time this payment was made. On March 25, 1978, Bryan purchased a used 1977 Buick for $5,550.00. He made a down payment of $2,000.00, and financed the remainder of the purchase price by borrowing $3,500.00 from the Farmer's Exchange Bank. His purchase of this 1977 Buick was prompted by the fact that he could no longer rely on his 1972 Buick to make the necessary trips to and from Eufaula each day or the trips to the various destinations were the union was promoting the boycott.

The greatest portion of the $2,000.00 down payment consisted of earnings of Mrs.

Bryan from her employment with the Barbour County Board of Education and a tax refund. See Defendants' Exhibit No. 12; Bryan's Deposition, p. 50. The remaining portion of the down payment consisted of four checks from the strike fund, totalling $810.00. See Plaintiffs' Exhibit No. 28. Following the initial purchase of the 1977 Buick, Bryan received four additional checks totalling $864.00, which he used as payments of his loan account with the Farmer's Exchange Bank. See Plaintiffs' Exhibit No. 25. The monthly payments were $119.00, and after these four checks were credited to Bryan's account, the account was paid through November 1978.

Plaintiffs argue that Bryan's 1972 Buick was kept in good repair with strike funds and that he could have continued to use this automobile in his union-related travels. Proceeding on this argument, plaintiffs

contend that Bryan's purchase of the 1977 Buick, and specifically his use of strike funds in connection with that purchase, was manifestly unreasonable. However, the only evidence before the Court concerning the condition of the 1972 Buick was Bryan's testimony that it was no longer capable of making the required trips for the union. Since Bryan unquestionably needed the use of an automobile in order to carry out his duties as a strike leader, the Court finds reasonable his purchase of the 1977 Buick and his use of strike funds for the initial purchase and subsequent monthly payments.[16]

On March 25, 1978, defendant Greene received a check for $180.00 and used this check to make two mortgage payments. According to the testimony of Anthony Plemons, an employee of the Farmer's Home Administration, Greene's mortgage debt was

current at this time, and this payment placed Greene one month ahead. See Defendants' Exhibit No. 1. Greene subsequently received four other checks form the strike fund for the purpose of mortgage payments, and his receipt of these checks constituted payment of his mortgage debt through October 1978. See Check No. 5985 ($180.00); Check No. 6696 ($300.00); Check No. 6738 ($180.00); and Check No. 6744 ($140.00).

Mr. Caldwell testified that he authorized defendants to use strike funds to make advance mortgage payments. At the time he gave this authorization, defendants were unemployed. He further testified that it would be unauthorized for defendants to use strike funds to make mortgage payments after the date they obtain full-time employment. Mr. Strevel offered similar testimony. Therefore, plaintiffs submit that the Court

should at least order reimbursement from Greene for the strike funds he received in June 1978 and used for mortgage payments in September and October 1978, since he returned to full-time employment in August 1978.

Greene maintained, however, that Mr. Caldwell never informed him that once he obtained full-time employment he would have to return any strike funds he previously to make advance mortgage payments. The other defendants offered similar testimony, and Mr. Caldwell did not testify otherwise. Under these circumstances, the court concludes that Greene need not reimburse the union for the September and October mortgage payments that he made with strike funds in June 1978.

On or about May 8, 1978, George Bullard received a check for $270.00 and used this check as partial payment for a mortgage debt

he owed to the Farmer's Home Administration. Anthony Plemons testified that this payment placed Bullard $411.00 ahead of schedule on his mortgage payments, which were $83.00 per month. At the time Bullard received this check, he was unemployed. Soon thereafter, he went to work for Cutler Egg Products. For the same reasons the Court found reasonable Greene's receipt of strike funds as advance mortgage payments, the Court finds Bullard's receipt of these funds reasonable and will not order his reimbursement of these funds. However, the Court does find unreasonable Bullard's receipt of check number 6743 ($180.00) on June 3, 1978. Although the purpose given for his receipt of this check was "house payment," Anthony Plemons testified that this check was never received and applied against Bullard's mortgage account. Furthermore, Bullard had begun full-time

employment with Cutler Egg Products in May 1978. Since Mr. Caldwell and Mr. Strevel both testified that it would be an unauthorized strike fund expenditure for a defendant to receive strike funds for mortgage payments when at the time of his receipt the defendant was employed full-time, the Court must conclude that Bullard should repay $180.00 to the union.

After examining these "third-party expenditures" to determine whether defendants' receipt was unreasonable, the Court concludes that each defendant should repay to the union the following amounts received by the as "third party expenditures."

DEFENDANT	AMOUNT
Charlie Greene	$1,680.32
Arthur Comer	0.00
George Bullard	400.00
Billy Bryan	225.00

The Court recognized that it has been liberal to the defendants in allowing many of these "third party expenditures," but many of them were expressly authorized by representatives of the International before defendants received the funds and others were characterized as proper by high ranking International representatives. The Court is aware the representatives of the International are in a far better position than this Court to judge what expenditures are in the long run interest of the union to

see that effective strike leadership is provided.

III. INDEMNITY LIABILITY

Plaintiffs' complaint against defendants Greene, Comer, Bullard, and Bryan was filed on May 1, 1980. On July 7, 1983, plaintiffs amended their complaint to add the bonding company, United States Fidelity & Guaranty Corporation (USD&G), as co-defendant. USF&G has raised several grounds in support of its position that it should be absolved from any financial liability in this action.

USF&G initially contends that there is no statutory authority to join it as a defendant in this action. This same argument has been advanced by bonding companies in other cases and has been rejected by the courts in each instance.

See Robinson v. Weir, 277 F. Supp. 581, 582 (D. Neb. 1966); Purcell v. Keane, 277 f. Supp. 252, 257 (ElDl Pa. 1967), affirmed, 406 F. 2d 1195 (3rd Cir. 1965). Consistent with the rationale in Robinson and Purcell, supra, this Court holds that a union member may join as a defendant in a Section 501 action the surety which has bonded the officer defendants and that Section 502 implicitly authorizes such joinder.

USF&G next contends that given it if is properly joined as a defendant in this action, plaintiffs failed to satisfy various preconditions to suit on the bonds, and, thus, should be denied recovery on said bonds. Section 5 of the bond provides the following:

> Upon knowledge or discovery of loss under this bond, the insured shall: (a) give notice thereof as soon as practicable to the underwriter and (b) file detailed proof of loss, duly sworn to, with the underwriter within four months after the discovery of loss. No

> action shall lie against the underwriters, unless as a condition precedent thereof, there shall have been full compliance with all the terms of this bond, nor until 90 days after the requested proofs of loss have been filed with the underwriter, nor at all unless commenced within one year from the date when the insured discovers the loss.

Since it affirmatively appears that plaintiffs failed to give notice of the loss, failed to file a detailed proof of loss, and failed to institute this action within one year after discovery of the loss, USF&G urges a judgment in its favor. Unquestionably, such a result would obtain under Alabama law. Brown v. State Farm Mutual Automobile Casualty Insurance Co., 506 F.2d 976, 978 (5th Cir. 1975); Pharr v. Continental Casualty Co., 429 So. 2d 1018, 1019 (Ala. 1983).

Plaintiffs claim, however, that they would not be charged with the duty to satisfy the aforementioned preconditions to suit For this proposition, plaintiffs rely upon Purcell v. Keane, 277 F. Supp. 252 (E.D. Pa. 1967). In Purcell, as in this case, plaintiffs never provided the surety with notice of the loss or with a detailed proof of loss. In rejecting the surety's argument that plaintiffs' failure to comply with these preconditions of the bond

discharged the surety from liability, the court held that where the "individual members had no actual knowledge of the provisions of the surety contract, they will not be charged with the duty of giving notice to the surety company in accordance with the provisions of the insurance policy." Id. at 258. Accord, Irving Trust Co. v. Nationwide Leisure Corp., 95 F.R.D. 51,67 (S.D.N.Y. 1982); Giordani v. Hoffman, 295 F. Supp. 463, 477 (E.D. Pa. 1969).

There is no evidence that plaintiffs acquired knowledge of the provisions of the bond before receiving a copy thereof from USF&G on September 15, 1983. However, it is undisputed that plaintiffs were put on notice at least by June 9, 1980 that USF&G had bonded the individual defendants. See Defendants' Exhibit No. 5. Despite this notice, plaintiffs apparently made no effort to secure a copy of the bond from the International or USF&G. In fact, USF&G had no indication that it might be involved in this action until it was added as a party defendant on July 7, 1983.

The provisions in USF&G's bond are certainly not unique to Section 502 surety

bonds. Similar provisions are found in every bond or surety contract. Given plaintiffs', or at least their counsel's, knowledge that USF&G had bonded the individual defendants, the Court finds a delay of more than three years in bringing USF&G into the lawsuit us unreasonable. While the Purcell rule is conceptually sound in the abstract where one is dealing with a suit brought by union members under Sec. 501(b), the Purcell court was not considering a factual situation where plaintiff's counsel waited for more than three years after being provided with evidence of a bond before taking any action to advise the surety of any claim. In the opinion of this Court, the rule should be that the bond's time limitations were tolled until plaintiffs first learned of the bond's existence and thereafter were given a reasonable time to inquire about its

coverage and conditions. Since plaintiffs learned in June 1980 that a bond covered these defendants but despite this knowledge did nothing until July 1983, the Court must conclude that a reasonable time expired and that USF&G should be discharged from all liability.

CONCLUSION

After examining the foregoing findings in light of the applicable legal principles, the Court concludes that the union is entitled to reimbursement of the following amounts from each defendant:

DEFENDANT	AMOUNT
Charlie Green	$6,102.73
Arthur Comer	3,206.41
George Bullard	3,084.08
Billy Bryan	2, 068.08

A separate judgment will be entered in accordance with this memorandum opinion.

DONE this 6th day of June, 1984.

UNITED STATES DISTRICT JUDGE

CA No. 80-180-N

APPENDIX A

A. Charlie Greene

CHECK NO.	DATE	AMOUNT	PURPOSE
1. 2031	6/4/77	$80.00	Union Business
2. 2126	6/11/77	80.00	Union Business
3. 2356	6/25/77	15.00	U.B/AL Power
4. 3374	9/3/77	50.00	Strike Benefit
5. 3501	9/10/77	50.00	Strike Benefit
6. 3642	9/24/77	150.00	Strike Benefit
7. 3738	10/1/77	300.00	S.B/Med. Exp.
8. 3767	10/8/77	90.00	Strike Benefit
9. 3889	10/15/77	100.00	Strike Benefit
10. 3971	10/22/77	120.00	Strike Benefit
11. 4066	10/29/77	150.00	Strike Benefit
12. 4148	11/5/77	240.00	Strike Benefit
13. 4194	11/12/77	150.00	Strike Benefit
14. 4257	11/16/77	50.00	Picket Ln. Exp
15. 4302	11/19/77	180.00	Strike Benefit
16. 4365	11/26/86	75.00	Strike Benefit
17. 4606	12/14/77	100.00	Strike Benefit
18. 4793	12/17/77	210.00	Strike Benefit
19. 4836	12/31/77	160.00	Strike Benefit
20. 4929	1/6/78	75.00	Strike Benefit
21. 5035	1/7/78	150.00	Strike Benefit

*Beginning in April 1978, the checks which previously had been issued with the accompanying purpose in the ledger as "strike benefits" were no longer denoted as such. There was no purpose stated for these checks. This failure to properly denote these checks as strike benefits was probably due in part to Walter Ward's abandonment of the strike around this time and time constraints placed on Charlie Green by his having to make several boycott trips for the union.

22. 5208	1/23/78	150.00	Strike Benefit
23. 5292	1/28/78	100.00	Book Work
24. 6087	4/1/78	75.00	Strike Benefit*
25. 6262	4/15/78	60.00	Strike Benefit
26. 6270	4/18/78	33.00	Strike Benefit
27. 6325	4/22/78	200.00	(No Purpose)
28. 6413	4/29/78	80.00	(No Purpose)
29. 6497	5/6/78	120.00	Strike Benefit
30. 6649	5/13/78	120.00	Paid Bill
31. 6721	5/27/78	170.00	Strike Benefit
32. 6759	6/10/78	75.00	Strike Benefit
33. 6812	9/11/78	244.10	Lost Time/Exp

CA No. 80-180-N

APPENDIX A

B. Arthur Comer

CHECK NO.	DATE	AMOUNT	PURPOSE
1. 2592	7/16/77	$125.00	Strike Benefit
2. 2798	7/23/77	77.00	Strike Benefit
3. 2799	7/23/77	25.00	Strike Benefit
4. 2851	7/30/77	55.00	Strike Benefit
5. 3350	9/3/77	228.00	5 weeks S.B.
6. 3639	9/24/77	180.00	Strike Benefit
7. 3796	10/15/77	220.00	Strike Benefit
8. 4009	10/29/77	320.00	Strike Benefit
9. 4932	1/7/78	330.00	Strike Benefit
10. 5358	2/4/78	187.00	Strike Benefit
11. 5395	2/11/78	210.00	Strike Benefit
12. 6012	3/25/78	220.00	Strike Benefit
13. 6047	4/1/78	275.00	No Purpose Std
14. 6509	5/6/78	330.00	Strike Benefit
15. 6756	6/10/78	165.00	Strike Benefit
16. 668	12/15/78	339.68	Strike & Trips

C. Billy Bryan

	CHECK NO.	DATE	AMOUNT	PURPOSE
1.	3730	10/1/77	50.00	Strike Benefit
2.	3811	10/8/77	49.00	Strike Benefit
3.	3885	10/15/77	130.00	Strike Benefit
4.	3973	10/22/77	50.00	Strike Benefit
5.	4064	10/29/77	269.00	Strike Benefit
6.	4065	10/29/77	50.00	Strike Benefit
7.	4145	11/5/77	52.00	Strike Benefit
8.	4232	11/12/77	150.00	Expenses
9.	4331	11/19/77	50.00	Strike Benefit
10.	4400	11/26/77	50.00	Strike Benefit
11.	4499	12/3/77	49.00	Strike Benefit
12.	4593	12/10/77	51.00	Strike Benefit
13.	4796	12/17/77	210.00	Strike Benefit
14.	4905	12/31/77	274.00	Strike Benefit
15.	4906	12/31/77	50.00	Strike Benefit
16.	5713	3/4/78	52.00	Strike Benefit
17.	5822	3/11/78	100.00	Strike Benefit
18.	5867	3/18/78	185.00	Car Repair
19.	5926	3/25/78	300.00	Strike Benefit
20.	5982	3/25/78	50.00	Strike Benefit
21.	6086	4/1/78	50.00	Strike Benefit
22.	6176	4/8/78	50.00	Strike Benefit
23.	6260	4/15/78	150.00	Strike Benefit
24.	6411	4/22/78	125.00	No Purpose Std
25.	6522	5/6/78	150.00	Strike Benefit
26.	6645	5/13/78	375.00	Expenses
27.	6722	5/27/78	125.00	Strike Benefit
28.	6762	6/10/78	175.00	Personal Bills
29.	6814	9/11/78	379.56	Lost Time/Exp

C. George Bullard

	CHECK NO.	DATE	AMOUNT	PURPOSE
1.	2016	6/4/77	60.00	Union Business Pd Member Bill*
2.	2127	6/11/77	288.81	Union Business Trip
3.	2253	6/18/77	83.36	Union Business Strike Benefit
4.	2261	6/18/77	210.00	Picket Expense Strike Benefit
5.	2352	6/25/77	92.12	Union Business Pd Member Bill
6.	2477	7/2/77	90.72	Union Business Pd Member Bill
7.	2549	7/9/77	149.19	Union Business Pd Member Bill
8.	2551	7/9/77	89.76	Union Business Pd Member Bill
9.	2671	7/16/77	60.00	Strike Benefit
10.	2678	7/16/77	66.26	Picket Line Exp
11.	2782	7/23/77	116.08	Picket Line Exp
12.	2880	7/30/77	105.66	Union Expense
13.	3725	10/1/77	85.94	Picket Line Exp Strike Benefit
14.	3726	10/1/77	45.00	Strike Benefit
15.	3755	10/8/77	85.00	Strike Benefit

George Bullard testified that whenever a check states "Union Business" or "Strike Benefit" as its purpose, chances are that check was intended to be for picket line and union hall expenses. He never was involved with maintaining the financial records, and the different people who were often categorized an expenditure differently.

16. 3868	10/8/77	88.52	Strike Benefit
17. 3870	10/15/77	184.99	Picket Line Exp
18. 4016	10/29/77	84.77	Picket Line Exp
19. 4017	10/29/77	105.00	Strike Benefit
20. 4147	11/5/77	130.15	Picket Line Exp
21. 4180	11/12/77	167.50	Strike Benefit
22. 4181	11/12/77	81.53	Picket Line Exp
23. 4333	11/19/77	55.00	Strike Benefit
24. 4338	11/19/77	50.00	Strike Benefit
25. 4416	11/26/77	95.05	Picket Line Exp
26. 4600	12/10/77	113.17	Picket Line Exp
27. 4817	12/17/77	50.49	Picket Line Exp
28. 4818	12/17/77	210.00	Strike Benefit
29. 4835	12/27/77	143.00	Strike Benefit
30. 5006	1/7/78	129.73	Picket Expense
			Strike Benefit
31. 5079	1/14/78	182.00	Strike Benefit
32. 5080	1/14/78	81.18	Picket Expense
			Strike Benefit
33. 5283	1/28/78	190.70	Picket Expense
			Strike Benefit
34. 5370	2/4/78	102.10	Picket Expense
			Strike Benefit
35. 5460	2/11/78	72.13	Picket Expense*
			Strike Benefit
36. 5554	2/18/78	82.69	Picket Expense*
			Strike Benefit
37. 5635	2/25/78	107.35	Picket Expense*
			Strike Benefit
37A.5716	3/4/78	137.25	Utilities
38. 5817	3/11/78	216.23	Utiltiies
			House Payment
39. 5818	3/11/78	101.21	Picket Expense*
40. 5896	3/18/78	98.31	Picket Expense*
			Strike Benefit
41. 5983	3/22/78	117.15	Picket Expense*
			Strike Benefit
42. 6084	4/1/78	117.56	Picket Expense*
43. 6170	4/8/78	123.85	Picket Expense*
44. 6172	4/8/78	243.10	Utilities
45. 6259	4/15/78	132.86	Picket Expense*
46. 6323	4/22/78	100.37	Picket Expense*

47. 6326	4/22/78	67.50	Strike Benefit
48. 6407	4/29/78	142.00	Strike Benefit
49. 6408	4/29/78	93.30	Picket Expense*
50. 6489	5/1/78	129.34	No Purpose Stated
51. 6639	5/13/78	75.00	Strike Benefit
52. 6694	5/20/78	50.00	Strike Benefit
53. 6714	5/27/78	222.00	No Purpose Stated
54. 6715	5/27/78	247.00	No Purpose Stated

IN THE UNITED STATES DISTRICT COLUMBIA
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ELBET ERKINS and
SAMUEL DENSON

Plaintiffs

vs.

BILLY BRYAN, and ARTHUR
COMER, and GEORGE BULLARD,
and CHARLIE GREENE, and
UNITED STATES FIDELITY
AND GUARANTY CORPORATION

Defendants

JUDGMENT

In accordance with the attached memorandum opinion, it is

ORDERED, ADJUDGED and DECREED that United Steelworkers of America, AFL-CIO have and recover from the individual defendants the following amounts:

Charlie Greene	$6,102.73
Arthur Comer	3,206.41
George Bullard	3,084.08
Billy Bryan	2,068.08

It is further ORDERED, ADJUDGED AND DECREED that United Steelworkers of American, AFL-CIO-CLC have and recover nothing from defendant United States Fidelity and Guaranty Corporation.

This Court having determined that United States Fidelity and Guaranty Corporation was discharged from any and all liability under its bond, it is further ORDERED, ADJUDGED and DECREED that the cross claim of United States Fidelity and Guaranty Corporation against the individual defendants is dismissed as moot.

It is further ORDERED that the court costs incurred in this proceeding are hereby taxed against the individual defendants, for which execution may issue.

DONE this 6th day of June, 1984.

UNITED STATES DISTRICT JUDGE